

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

61036

FILE: B-185852

DATE: June 28, 1976

MATTER OF: Boeing Company

98389

DIGEST:

Incumbent protests against RFP for aircraft maintenance services requiring offerors to insert hourly rate multiplied by estimated 600 man-hours for over and above work (11 percent of contract) because it does not provide for recognition of incumbent's experience and award to any other firm will not result in lowest cost. Protest is denied because no wide discrepancies in performance are expected as RFP contains stringent experience responsibility requirements, Government has significant control over man-hours to be expended and man-hours estimate is reasonable. Moreover, recognition of experience is speculative and incumbent's suggested evaluation formulas would have no effect on competitive standing of offerors.

This is a protest by the Boeing Company (Boeing) against certain aspects of the method of evaluation in request for proposals (RFP) No. F34601-76-R-1516, issued by the Department of the Air Force (Air Force), Oklahoma City Air Logistics Center, Tinker Air Force Base, Oklahoma, for the procurement of services to perform modification and programmed depot maintenance (MOD/PDM) and other related work on the Air Force's fleet of KC-135 aerial refueling tankers.

The RFP was issued on December 1, 1975. Preproposal conferences were held on January 7 and 8, 1976. Initial proposals were received on February 4, 1976. After negotiations, best and final offers were received on February 25, 1976. Award of the contract was made to the Hayes International Corporation on or about June 10, 1976.

Generally, the RFP calls for two classes of work to be performed. The first class of work, as contained in appendix "A" (Work Specification) established requirements for PDM, modifications, flight tests, and preparation for delivery of the aircraft. All of this work is to be done on a fixed-price-per-aircraft basis. Eighty-nine percent of the contract is to be performed on a fixed-price basis.

During the course of the work described in appendix "A," the contractor is required to be "* * * alert for obvious defects in surrounding areas. Defects discovered that can be corrected by a skilled mechanic in two and one-half (2-1/2) hours or less shall be repaired as part of the fix price." The discovered defects which will require more than 2-1/2 hours to repair are to be forwarded to the administrative contracting officer (ACO) for disposition. This second class of work requiring more than 2-1/2 hours of effort is known as Over and Above (O&A) work and is to be performed on the basis of a set rate per man-hour of work as opposed to a fixed unit price per aircraft. The hourly O&A work constitutes the remaining 11 percent of the total contract work effort.

Since the O&A work can only be estimated, the Air Force established a price evaluation formula therefor whereby the offeror's quoted hourly rate would be multiplied by 600 man-hours. Section D-4(7) of the RFP's evaluation and award factors provides as follows:

"Items 0005, 1005 and 2005 (Hourly Rate Over and Above): The applicable hourly rate quoted multiplied by the estimated man-hours of 600 times the quantity of aircraft of Items 0001, 1001 and 2001 as set forth above. This estimate is furnished for evaluation purpose only and is not intended as a limitation of the number of hours which will actually be experienced in the performance of the fixed hourly rate over and above work under any resultant contract. The offeror agrees that the quoted hourly rate(s) shall apply regardless of the man-hours that are experienced."

The evaluation to determine the low offeror was to take into account prices submitted for a 1-year base and two subsequent 1-year option periods. The Government unilaterally reserved the option to retain the incumbent contractor for two additional 1-year periods, subject to satisfactory negotiations.

Boeing, the then incumbent contractor for the past 5 years, objects to the 600-man-hour estimate for the O&A work at a fixed hourly rate and the 2-1/2-hour figure for repair of defects as part of the fixed price. Due to its experience and efficiency in PDM work over the last 5 years, Boeing states that a lower man-hour estimate for O&A work should be applied to it or, conversely, a higher man-hour estimate should be applied to others. The 600-man-hour figure is characterized by Boeing

as arbitrary and, when applied, results in a meaningless comparison of offers. Boeing contends that it is patently unfair to require that all defects that may be repaired in 2-1/2 hours or less shall be repaired as part of the fixed price, citing its current experience as the incumbent contractor.

In addition, Boeing states that the O&A evaluation should be subject to an improvement or productivity curve relying on the repetitive nature of the tasks to be performed. It is stated that one offeror should not be expected to perform at the same level of experience of other less experienced offerors. Because of these evaluation factors, Boeing argues, the evaluation will create an understatement of the lowest real/ultimate cost to the Government. In so arguing, Boeing submits sample evaluations to demonstrate its position, utilizing a 57-percent learning curve in its favor and suggests other evaluation formulas.

The Air Force explains that the 600-man-hour estimate for O&A is "far from arbitrary" and represents the agency's best estimate of the anticipated over and above work. The estimate is based on Boeing's 5-year average of 940 hours per aircraft for O&A work. In fiscal year 1976, Boeing performed 960 hours of O&A work per aircraft. The average had increased from a low of 655 hours per aircraft to a high of 1,242 hours per aircraft. The reasons for the increase related to two or three major areas. These items averaged approximately 400 man-hours per aircraft and were shifted to the fixed-price portion of the work, thereby reducing the total hourly O&A work to be estimated. Six hundred hours became the figure for the purpose of evaluation as an approximate number of hours of O&A work which might be required by subtracting the 400 man-hours from the 960 man-hours for fiscal year 1976.

The 2-1/2-hour figure involves correcting discrepancies such as loose or broken clamps, stop-drilling of cracked areas, and replacement of loose or missing fasteners. Any of these corrections which takes more than 2-1/2 hours becomes O&A work in its entirety. According to the Air Force, this represents a reasonable period of time within which discovered discrepancies can be corrected without causing a major disruption of the contractor's work effort.

The Air Force states that the 600-man-hour figure cannot and does not attempt to take into account experience and efficiency of the offerors since experience is a matter of responsibility. In addition, the Air Force believes any recognition of an experience factor in the price evaluation formula would be "unwarranted favoritism and entirely speculative. The experience and efficiency

of the incumbent contractor should be reflected in his price, not in any evaluation formula weighted to his advantage." The 2-1/2-hour figure is not viewed as discriminating against the incumbent or others, but as representing an earnest attempt to reduce the overall amount of O&A work.

With respect to the use of a learning curve, it is the position of the Air Force that O&A work consists of countless and various repairs which occur irregularly and require varying degrees of effort to correct. Therefore, by its very nature, O&A work cannot be considered repetitive and does not easily lend itself to evaluation by the use of a learning curve.

It is important here to mention one of Boeing's suggested evaluation formulas reflecting a learning curve recognizing the firm's experience. Boeing suggests that while it should be evaluated as being reasonably capable of performing estimated hourly O&A tasks in 600 man-hours, any other offeror with minimal experience would need 1,060 man-hours to perform the same tasks. Thus, multiplying those figures times the fixed hourly rate would result in an evaluation representing the true ultimate cost to the Government. Of course, Boeing's objection to the 2-1/2-hour figure also would impact any evaluation.

This suggested method of evaluation does not recognize several cogent provisions of the RFP which, in our view, would tend to eliminate, or at the very least, greatly minimize, the alleged expected inequalities in performance. In this regard, the RFP contains a section on "Demonstration of Responsibility." Proposers are cautioned that contractors will be fully responsible for properly performing the highly critical services required. The experience of a prospective contractor was made vital to the responsibility determination, as follows:

"Companies who have not had previous or current experience in the type work required to perform a contract resulting from this RFP, and who do not presently have in operation a maintenance product facility may not qualify as a responsible contractor. The nature and priority of this requirement to the overall USAF Mission is so critical that time will not permit a company to, facilitate and build up its production at a slow pace."

Offerors were required to submit adequate documentation to demonstrate affirmatively their capability to timely perform. Offerors were also

required to provide details on all aspects of the prior experience of the offerors and their management and line personnel on aircraft of similar or greater complexity including minimum acceptable multi-year experience levels. Further, the RFP called for a comprehensive preaward survey of a favorably considered proposal characterized as "* * * a part of the evaluation process * * *."

The pricing schedule, in which offerors were to set forth the hourly O&A rates, provided that O&A work shall be accomplished when and as directed by the ACO in accordance with section J-1, entitled "Over and Above Procedures." It is pertinent to note here that the underlying premise of Boeing's argument is that any contractor performing the O&A work possesses exclusive control over the number of man-hours to perform that work with appropriate payment at the fixed hourly rate. This, according to Boeing, works to its disadvantage in the evaluation.

Our review of section J-1, governing the O&A work procedures, results in the conclusion that the firm receiving the contract does not have exclusive or even dominant control over the man-hours to be expended in performing the O&A work. In this regard, section J-1 provides, in pertinent part, as follows:

"(a) Written authorization to proceed on items set forth in Sections E-1(b), E-2(b), E-3(b) must be received from the ACO before performance. This authorization to proceed will be provided by Work Requests issued by the ACO.

"(b) The Contractor will prepare Work Request proposals for necessary over and above work and submit them to the designated Government Quality Assurance Representative. Proposals must be identified to the contract, be serially numbered, and specify related changes, if any, to the contract delivery schedule. When applicable to aircraft, they must be consecutively numbered in a separate series for each aircraft. Upon request of the ACO, the Contractor will also prepare consolidated Work Request Proposals covering previously approved over and above items. Work Request proposals will be definitized by use of Standard Form 30.

* * * * *

"(e) Sections E-1(b)(2), E-2(b)(2), E-3(b)(2), Fixed Hourly Rate Items: The price negotiated by the ACO will be based on direct labor hours multiplied by the contract hourly rate. The number of direct labor hours required will be negotiated between the Contractor and the ACO. Direct labor is defined in Section J. The fixed hourly rate includes charges for direct labor costs, burdens, general and administrative expenses, warranty, other allowable costs and profit; but does not include direct parts and materials.

* * * * *

"(g) Failure to agree upon labor hours or price shall be considered a 'dispute concerning a question of fact' within the meaning of the clause of this contract entitled 'Disputes.'"

The above provisions clearly call for negotiation between the contractor and the ACO as to the number of direct labor hours required to perform the discovered defects as O&A work before the issuance of a Work Request by the ACO. Therefore, the Government retains a significant degree of control with respect to the number of man-hours to be expended for hourly O&A work. Implicit in this procedure is the responsibility of the ACO to determine, negotiate and authorize, irrespective of the experience of the contractor, a reasonable number of man-hours to perform the O&A work. Even if a contractor believes a task will take, for example, 6 man-hours, if the ACO determines the work should take only 4 man-hours with payment at the fixed hourly rate, the "disputes" clause is utilized to resolve the disagreement. Moreover, we believe these provisions of the contract would permit the ACO to not authorize work under the O&A hourly rate category if it was believed that the discovered defect would take a skilled mechanic 2-1/2 hours or less to correct.

The above discussion convinces us that Boeing's allegation that wide discrepancies in performance due to alleged experience differentials will occur would not be reflected by actual performance by a contractor other than Boeing. In our view, it is reasonable to conclude that effective contract administration would result in any contractor found responsible under the stringent responsibility requirements performing the O&A work at or near the stated hourly estimate, which has not been shown to be unreasonable.

We recognize that an ACO might take into account the experience of a prior incumbent in enforcing the O&A provisions of the contract. But, other factors need to be considered. For example, an experienced contractor on the same or similar aircraft may very well be able to perform the required work as efficiently as a prior incumbent. In fact, the firm awarded the contract, Hayes, was the incumbent for these requirements prior to Boeing.

We agree with the Air Force that any recognition of Boeing's experience would be highly speculative and subject to question if used in a competitive environment. We also agree with the Air Force that in a case such as this, the efficiencies and experience of offerors are best left to the individual offeror's assessment thereof in quoting prices to the Government. In conclusion, we cannot agree with Boeing that the method of evaluation has been shown to be arbitrary, unreasonable, or meaningless, or that the award will not yield the lowest ultimate cost to the Government.

Furthermore, even if the evaluation formulas advanced by Boeing had been utilized by the Air Force here, the competitive standing of the offerors would not have changed. In a report to our Office on the protest the Air Force stated, in part, as follows:

"Application of Boeing's Suggested Formulas to the Instant Competition. In its protest letter, Boeing suggested an evaluation formula for over-and-above work which relied on a learning curve, and at the protest conference Boeing suggested another evaluation formula for over-and-above work which is based upon a specified percentage of an offeror's total fixed price for MOD/PDM services. Even if one of Boeing's suggested evaluation formulas for over-and-above is applied to the instant procurement, however, it would not alter the position of the competing offerors."

Also, based on all available information, we have ascertained that the evaluated proposed price of the contractor, Hayes, was significantly below that proposed by Boeing for the fixed-price portion, or 89 percent of the contract work. The application of the evaluation formulas advanced by Boeing has little effect on the price

B-185852

differential for the fixed-price portion of the work and, consequently, had no effect on the offerors' competitive positions.

Accordingly, the protest is denied.

R. F. Kelly
Deputy Comptroller General
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